ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability To All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996	)	CC Docket No. 98-146

COMMENTS OF GTE

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5214

R. Michael Senkowski
Jeffrey S. Linder
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
(202) 429-7000

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
Irving, Texas 75038
(972) 718-6969

September 14, 1998

Summary

GTE commends the Commission for recognizing that it should "rely as much as possible on free markets and private enterprise to deploy advanced services." Without government intervention, markets have resulted in the widespread deployment and almost universal affordability of a wide range of advanced products and services, including color televisions, personal computers, CD players, VCRs, e-mail, voice mail, and on-line banking. In each case, the developers and marketers of the product were free to innovate, secure in the knowledge that they would not be subject to substantial regulatory compliance costs and that the potential rewards of their risk-taking would not be artificially limited. And, in each case, the product or service rapidly became available to virtually all consumers regardless of location or income level, as economies of scale and scope were achieved and market forces compelled continuing declines in prices.

This hands-off approach is also the best way of assuring the rapid and timely deployment of advanced telecommunications capability and services. Indeed, a wide range of companies using a multitude of diverse technologies – including copper, fiber, coaxial cable, terrestrial wireless, and satellites – are already bringing to market a host of advanced services, including integrated voice, video, data, and high-speed Internet access. While demand for and deployment of these offerings may be uneven at the start, the same held true for all of the products and services noted above. There is every reason to believe that the market, without regulatory intervention, will achieve Congress's goals in enacting Section 706 in a relatively short period of time. Consequently, the Commission should not compel any particular industry segment to

begin offering specific technologies, and should not supplement existing mechanisms for assuring the provision of telecommunications services to schools and libraries.

This is not to say that the current regulatory environment is fully consistent with achieving the rapid and timely deployment of advanced telecommunications technology, as directed by Congress. It plainly is not. Notwithstanding the extremely competitive nature of the advanced services market, one industry segment – the ILECs – is uniquely subject to burdensome and unwarranted regulatory shackles.

The ILECs must provide advance notice of their rates for advanced services; must give their competitors deeply discounted access to equipment and facilities that are readily available in the market; must sell their competitors advanced services below retail rates; must obtain regulatory authority to introduce new services; and must comply with pervasive regulations governing cost allocations, affiliate transactions, and virtually every other aspect of their business operations. None of the ILECs' competitors – not the large cable MSOs, not AT&T/TCG/TCI/BT, not MCI/WorldCom/Brooks/MFS/UUNet, and not Sprint/Deutsche Telekom/France Telecom, among legions of others – is encumbered by these obligations, even though they offer precisely the same services as the ILECs and have an abundance of sources other than the ILECs for virtually all key inputs.

This disparate regulation undermines the ILECs' investment incentives. Given the ILECs' resources, technical expertise, and experience in serving rural and inner city areas, these companies should be at the forefront in making advanced telecommunications technology and services universally available. Continued regulatory intervention, however – which would only be exacerbated by the highly

intrusive proposals in the *706 NPRM* – will produce marketplace distortions that are antithetical to the objectives of Section 706. To remove these distortions and permit true competition to develop, the Commission should take the following steps:

- Forbear from requiring ILECs to tariff their advanced service offerings.
- Reverse its determination that Digital Subscriber Line Access Multiplexers ("DSLAMs") and other non-bottleneck equipment used to provide advance services are network elements which may be subject to unbundling.
- Declare that ILECs need not make advanced services available for resale on a discounted basis.
- Refrain from adopting the hyper-separation requirements proposed in the *706 NPRM* and provide that ILEC affiliates meeting the modified *5th Report and Order* separation criteria will be considered non-dominant and non-incumbent.
- Work with state regulators to remove disincentives to investment by ILECs and other entities in the local loop, including class-of-service subsidies and geographic cost averaging requirements.
- Decline to impose additional restrictions on interactions between ISPs and ILECs or their affiliates.
- Assure nondiscriminatory access by all prospective providers, including ILECs, to new spectrum set aside for advanced services.
- Permit ILECs to introduce new switched access services without first petitioning for approval of new rate elements.

GTE respectfully submits that action consistent with these principles and recommendations will best advance the goals articulated by Congress in Section 706(b) of the 1996 Act.

Table of Contents

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of Advanced Telecommunications Capability To All Americans in a Reasonable and Timely Fashion, and Possible Steps To Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996	)	CC Docket No. 98-146

COMMENTS OF GTE

GTE Service Corporation and its below-listed affiliates[1] (collectively, "GTE") respectfully submit their comments concerning the Notice of Inquiry ("NOI") in this docket.[2] The NOI was issued in response to Section 706(b) of the 1996 Act, which directs the Commission to "initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) ...."[3] Based on this inquiry, the

---

[1] GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of the South, Inc., GTE Communications Corporation, GTE Wireless Incorporated, GTE Internetworking, and GTE Media Ventures Incorporated.

[2] FCC 98-187 (released August 7, 1998).

[3] Public Law No. 104-104, § 706(b), 100 Stat. 153 (reproduced at 47 U.S.C. § 157 note).

Commission is to "determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion."[4] If its determination is negative, the Commission "shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market."[5] As discussed below, GTE urges the Commission to be guided by one fundamental principle in discharging its obligations under § 706: to promote the "reasonable and timely" deployment of advanced telecommunications capability, the Commission should engage in the least possible regulation and should treat all providers of advanced telecommunications capability symmetrically.

I. INTRODUCTION: THE FUTURE OF REGULATION IN A CONVERGING MARKETPLACE

GTE commends the Commission for recognizing at the very beginning of the NOI that it should "rely as much as possible on free markets and private enterprise to deploy advanced services."[6] It is black-letter economics that, in the absence of market failure, the most efficient allocation of resources occurs through the operation of an unfettered interchange between buyers and sellers.[7] The wisdom of this approach is

---

[4] *Id.*

[5] *Id.*

[6] NOI, ¶ 5.

[7] To the extent social policies favor the provision of services at rates or to areas where it is unprofitable to do so, universal service mechanisms can continue to assure that such policies are implemented. In a competitive marketplace, however, it is imperative that

(Continued...)

evident from the rapid and broad introduction of new technology and advanced services in markets where the government does not intervene in the distribution and pricing of products. In the last thirty years, color televisions, microwave ovens, VCRs, personal computers, CD players, e-mail, voice mail, and on-line banking – all of which were considered advanced when first introduced – have become ubiquitous and almost universally affordable, as economies of scope and scale have been achieved and market forces have forced price reductions. In each case, the developers and providers of these services or products were free to innovate, secure in the knowledge that they would not be subject to substantial regulatory compliance costs and that the potential rewards of their risk-taking would not be artificially limited.

The same free-market model unquestionably is the best way to assure the broadest, most rapid, and most timely deployment of "advanced telecommunications capability."[8] The capability to originate and receive advanced telecommunications exists today, thanks to the proliferation of transmission media capable of handling broadband communications. As the NOI acknowledges, advanced services may be transmitted over telephone networks, cable television systems, fixed and mobile wireless networks, over-the-air broadcasting, electric utility networks, and satellites.[9]

(...Continued)
any subsidies be explicit and competitively neutral.

[8] This term is "defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology." 1996 Act, § 706(c)(1).

[9] NOI, ¶¶ 18-52. GTE disagrees with the finding in the *706 MO&O* that all advanced
(Continued...)

Indeed, competitors are already using all of these technologies to deliver "high-quality voice, data, graphics, and video telecommunications,"[10] and there is every indication that the availability of these services is in line with existing and forecasted demand.

Along these same lines, the Commission must be careful not to favor or deter any technology or class of providers.[11] The optimum delivery platform or platforms for any particular advanced service, customer group, and geographic area is best determined by the marketplace. As consumers become more sophisticated and services become more advanced, competitors will face tremendous pressure to develop efficient, affordable, and attractive delivery mechanisms. Any company that fails to do so will quickly lose out in the marketplace. After all, if GTE does not offer what customers want, there are a multitude of competitors – many of whom have greater resources than GTE – waiting in the wings. To name a few, AT&T/TCG/TCI/BT, MCI/WorldCom/MFS/Brooks/UUNet, and Sprint/Deutsche Telekom/France Telecom are all fully capable of providing any service to any customer almost anywhere in the world.

(...Continued)
services are telecommunications services. *706 MO&O*, ¶ 35. No one can confidently predict the future array of advanced services that will be developed and delivered, but it is clear that not all new products and services requiring advanced telecommunications capability will be telecommunications services. Rather, each advanced service must be analyzed in light of the statutory definitions.

[10] Section 706(c)(1).

[11] Nor should the Commission require that advanced telecommunications capability have particular technical characteristics; e.g., be either asymmetric or symmetric. *See* NOI, ¶ 75. Some advanced service may best be provided asymmetrically, and others symmetrically. Once again, the market will determine the ideal characteristics of the delivery platform.

The advanced services marketplace is intensely competitive, and the equipment used to provide advanced services is readily available in the marketplace. In addition, many of the competitors, as noted above, are global companies with tremendous access to capital. Nonetheless, the existing regulatory regime targets one class of competitors – the incumbent local exchange carriers ("ILECs") – with a host of burdensome and unnecessary obligations that impede their ability to innovate, invest, and respond to marketplace pressures. This intrusive and asymmetrical regulation of a single class of competitors, which enjoy no advantage over any other company providing advanced services, is the single biggest obstacle to the reasonable, timely, and widespread deployment of advanced telecommunications capability.

Against this background, GTE explains in Section II below that advanced telecommunications capability and services already are being deployed, and that the best way to maximize availability and affordability of these services is to allow the marketplace to function with the least possible government intervention. Section III.A discusses the disincentives to investment created by disparate, intrusive regulation of ILECs. Section III.B contains GTE's specific recommendations for removal of regulatory barriers to investment in and deployment of advanced telecommunications capability and services. In that Section, GTE urges the Commission to take the following action:

- Forbear from requiring ILECs to tariff their advanced service offerings.
- Reverse its determination that Digital Subscriber Line Access Multiplexers ("DSLAMs") and other non-bottleneck equipment used to provide advance services are network elements which may be subject to unbundling.

- Declare that ILECs need not make advanced services available for resale on a discounted basis.

- Refrain from adopting the hyper-separation requirements proposed in the *706 NPRM* and provide that ILEC affiliates meeting the modified *5th Report and Order* separation criteria will be considered non-dominant and non-incumbent.

- Work with state regulators to remove disincentives to investment by ILECs and other entities in the local loop, including class-of-service subsidies and geographic cost averaging requirements.

- Decline to impose additional restrictions on interactions between ISPs and ILECs or their affiliates.

- Assure nondiscriminatory access by all prospective providers, including ILECs, to new spectrum set aside for advanced services.

- Permit ILECs to introduce new switched access services without first petitioning for approval of new rate elements.

GTE respectfully submits that action consistent with these principles and recommendations will best advance the goals articulated by Congress in Section 706(b) of the 1996 Act.

II. THE MARKETPLACE, NOT REGULATION, WILL BEST PROMOTE THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY ON A REASONABLE AND TIMELY BASIS.

A. Advanced Telecommunications Capability and the Services Based on that Capability Are Being Offered Today By a Wide Range of Providers.

Competitors already are using advanced telecommunications capability to provide a host of advanced services and service packages over a variety of delivery platforms. Examples include:

- AT&T and TCI have announced that, following their merger, they will upgrade TCI's cable infrastructure to accommodate two-way communication and

begin providing digital video services, digital telephony, and high-speed data to consumers by the end of 1999.[12]

- Sprint is deploying an "ION" network, which, "[b]y using ATM technology coupled with [Dense Wave Division Multiplexing] and its synchronous optical ring architecture ... has the ability to push its network intelligence into customer premises" and give "access to information services ... phone calls, Internet, [and] videoconferencing." According to Sprint, the new network will "give continuous access ... for voice, video, data, faxes, and other services" to both large businesses and, within 18 months, to consumers.[13]

- Cox, MediaOne, and other large cable operators are offering integrated voice and high-speed Internet access along with multichannel video programming.[14] Indeed, as the recent OPP report regarding Internet over Cable notes, "[t]he cable industry is in the midst of a transformation ... to two-way, interactive broadband systems ... which enable the industry to deliver a wide range of telecommunications and information services – including Internet access, telephony, and digital television."[15] Cox has further announced the launching of digital telephone service via cable in San Diego, providing voice, video, and data over a single network.

- SkyWave Inc. has just announced a new Internet telephony gateway that "seamlessly bridges H.323 IP networks with SS7 intelligent networks,"

---

[12] Joint Release of AT&T and Tele-Communications, Inc., available at <http://www.att.com/press/0698/980624.cha.html>; *see also* Jared Sandberg and Thomas E. Weber, *A High Tech Vision Faces Big Hurdles*, Washington Post, June 25, 1998, at B1 (quoting AT&T Chairman C. Michael Armstrong as stating that "We can become a provider of broadband services that encompass telephony [and] entertainment").

[13] "Sprint Challenges Rivals With New Network, Seeks New Regulatory Treatment," *Communications Daily*, June 3, 1998, at 2-4. AT&T apparently plans to deploy a similar network. *See* "AT&T to launch high-speed network service," *Washington Times*, Sept. 10, 1998, at 1B.

[14] *See Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Fourth Annual Report*, 13 FCC Rcd 1034, 1063-69 (1998)

[15] B. Esbin, "Internet Over Cable: Defining the Future in Terms of the Past, OPP Working Paper #30 (August 1998), at 75 ("Internet Over Cable"). This Report goes on to describe the wide range of Internet services being offered over cable. *See id.* at 77-80.

enabling "carriers to integrate IP telephony into their current networks" and allowing them "to integrate new technology as the market evolves."[16]

- Direct Broadcast Satellite providers, with millions of customers, are offering video and Internet access. For example, Hughes DirecPC/DirecTV offers high-speed Internet access, called Turbo Internet Software, at speeds ranging from 200 to 400 kbps.[17]

- Incumbent local exchange carriers such as GTE, BellSouth, and Ameritech are offering video[18] and Internet access through affiliates, which also may resell voice service where permitted by state regulators.[19]

- LMDS providers are offering local and long distance telephony, Internet access, and video. For example, WinStar is deploying network equipment that will support "enhanced voice, video conferencing, native LAN-LAN interconnections, MPEG-2 video and high-speed Internet access on a single fully integrated local metropolitan area ATM transport network."[20] According to WinStar's President and Chief Operating Officer, as a result of the new

---

[16] "SkyGate 99 Enables the Integration of IP Telephony and Intelligent Networks with H.323 and SS7 Interoperability," PRNewswire, Sept. 9, 1998.

[17] *See* <http://www.future-furnishings.com/DirectDuo/DirecDuof.html>; <http://www.direcpc.com/about/a36f.html>.

[18] In ¶ 27 of the NOI, the Commission inquires about ILECs' incentives to provide competitive MVPD service. GTE and other ILECs are extremely interested in entering this market, but have been frustrated in the past by overly intrusive regulation, such as the Commission's video dial-tone rules. The 1996 Act provides ILECs with the ability to provide cable service without being subject to Title II regulation, *see* 47 U.S.C. § 571. GTE believes this freedom will lead to additional investment by telephone companies and their affiliates in broadband infrastructure capable of supporting competitive MVPD services. *See, e.g.*, "U S WEST Gets Nod for Phoenix VDSL Service," *Telecommunications Reports*, Sept. 7, 1998, at 12.

[19] As discussed in section III below, one affirmative step the Commission can take to promote deployment of advanced telecommunications capability is to preempt state limitations on the ability of a CLEC affiliated with an ILEC to operate in the ILEC's service territory.

[20] *See* "WinStar and Hughes Network Systems Enter Strategic Relationship for Nationwide Deployment of Point-to-Multipoint Broadband Fixed Wireless Networks," <http://www.winstar.com/index/New.htm>.

equipment, "[f]or the first time, the resources and features of the much-heralded information superhighway will be affordable to nearly everyone, at speeds in excess of 200 megabits per second."[21]

For its part, GTE offers advanced services both through its existing ILEC affiliates,[22] and through other business units established to address consumer demand for integrated service packages.

B. Demand for and Deployment of Advanced Telecommunications Capability and Services Will Be Uneven at First, but the Availability of Such Infrastructure and Services Will Expand Rapidly if the Market Is Permitted To Function Without Undue Regulatory Intervention.

As with any new consumer product, demand for advanced services is developing unevenly. This most assuredly is not an indication of market failure. Rather, it reflects the simple fact that, during the initial stages of deployment, a critical mass of demand has not been achieved and efficiencies and economies of scale and scope have not been maximized.

For example, in many cases, businesses are the first adopters of new broadband technology, since they have the greatest need for high-speed transmission capabilities. As a result, carriers tend to make advanced telecommunications capability available first in areas with relatively high concentrations of business customers. This is not

---

[21] *Id.* Similarly, Lucent Technologies is developing technology that would boost the capacity of fixed wireless networks by ten to twenty times. Scientists at Lucent's Bell Labs research arm said the technology will be a "substitute for traditional copper wires." "Bell Labs Discovers a Way To Boost Wireless Networks," *New York Times*, Sept. 10, 1998, at B6.

[22] GTE Telephone Operations, GTOC Tariff F.C.C. No. 1, Transmittal No. 1148 (GTE DSL Solutions - ADSL Service) (filed May 15, 1998).

universally true, however: GTE's ADSL offering, for example, is aimed primarily at ISPs, CLECs, and IXCs serving residential and small business customers and can be provided on any loop that meets certain minimum criteria.[23] Likewise, cable modem service is of greatest interest to mass market consumers.

Similarly, many non-ILEC service providers are deploying advanced telecommunications capability solely or predominantly in urban areas. This, too, should be expected.[24] It can be expensive to invest in the infrastructure needed to provide such services. Accordingly, it is rational to build the infrastructure first in areas where demand is likely to be greatest and unit costs are likely to decline most quickly. Once economies of scale and scope are captured, infrastructure can be extended to less densely populated locations.

All in all, GTE believes that the marketplace is capable of assuring that advanced telecommunications capability meets existing and forecasted demand from all classes of customers (including schools and libraries). Capacity shortfalls, to the extent they exist,[25] are inevitable in any market with rapidly expanding demand. Without fail, however, in telecommunications as in other industries, the supply of new technologies

---

[23] GTE plans to deploy ADSL service in portions of 14 states.

[24] Of course, the incentive to deploy competitive facilities in urban areas and to defer deployment in rural areas is artificially strengthened by geographic averaging of the ILEC's retail rates. If rates in rural areas were permitted to reflect underlying costs, CLECs would have much stronger incentives to invest in competitive facilities. Accordingly, as discussed in Section III.B, below, the Commission and states should work together to transition to geographically deaveraged retail rates, with targeted high-cost support available to offset any affordability concerns.

[25] *See, e.g.*, NOI, ¶¶ 25, 33.

becomes commensurate with customer demand in a timely manner. The best way to assure prompt deployment of facilities to ameliorate temporary capacity constraints is to permit all competitors to respond quickly, unburdened by undue regulatory compliance costs, prior approval requirements, or other disincentives to investment.

Consequently, the Commission should not include particular advanced services within the basic universal service package.[26] It is abundantly clear that no advanced service comes close to meeting the statutory definition of "universal service."[27] No such service is "essential to education, public health, or public safety," and none has been "subscribed to by a substantial majority of residential customers."

Likewise, no action by the Commission is needed to assure that advanced services are made available to schools and libraries.[28] GTE believes that private investment already is meeting many of the needs of the education community. Moreover, to the extent a specific advanced service is a "telecommunications service," existing rules, regulations and programs already assure that any school or library desiring such a service receives it at the appropriate discount.[29] To the extent such a service is not a telecommunications service, it will be made available through the normal functioning of the market.

---

[26] NOI, ¶ 73.

[27] 47 U.S.C. § 254(c)(1)

[28] 1996 Act, § 706(b); NOI, ¶¶ 64, 72.

[29] *See generally* 47 C.F.R. §§ 54.500-54.517.

Nor, at this time, should the Commission compel any particular carrier to offer specific capabilities in particular areas[30] or establish a definitive schedule for deployment of advanced telecommunications capability.[31] It should reject, for example, APT's recommendation that the Commission place conditions on mergers and acquisitions compelling deployment in inner cities or low-income rural areas.[32] Such conditions could not be justified under Sections 214 or 310 of the Act, since they would bear no nexus to the merger itself. In addition, even if the conditions could be justified under the appropriate statutory standard, they would apply only to the subject parties, imposing unique costs and interfering with other investment plans.[33]

In any event, it is premature to assume that the competitors acting with appropriate incentives in a free marketplace will fail to deploy advanced

---

[30] For example, investment in and deployment of advanced telecommunications capability would not be promoted, and could well be harmed, by compelling ILECs to lease dark fiber. *See* NOI, ¶ 23. While GTE provides dark fiber leases where required to do so by order of state commissions, it continues to believe that dark fiber simply is not an unbundled network element because, by definition, it is not "used in" providing telecommunications services. *See* 47 U.S.C. § 153(29). In addition, most of GTE's dark fiber is held for identified or anticipated future demand, so compelling GTE to lease that fiber to another carrier would simply shift the obligation to invest in additional capacity from new entrants to GTE. Moreover, treating dark fiber as a network element, to be provided at hypothetical forward-looking cost, would create perverse incentives for new entrants to lease dark fiber from GTE rather than invest in their own facilities, actually diminishing the potential supply of advanced telecommunications capability.

[31] *See* NOI, ¶ 59.

[32] NOI, ¶ 71.

[33] In contrast, GTE agrees with APT that encouraging community-based organizations to create a "demand pull" could expedite the deployment of advanced telecommunications capability in low-income areas. *See* NOI, ¶ 71.

telecommunications capability wherever demand exists. Before making any such determination, the Commission must allow the market to operate unimpeded by regulatory intrusion. Only if advanced telecommunications capability has not been deployed where demand exists after a reasonable period of time (e.g., three to five years), should the Commission intervene to determine why demand is not being met and how the situation can be rectified.[34]

In the next section of these Comments, GTE details its specific recommendations for removing regulatory barriers to investment. GTE respectfully submits that eliminating these unwarranted obstacles is the most effective and desirable means of advancing the goals incorporated in Section 706(b).

III. THE COMMISSION CAN BEST PROMOTE THE DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY THROUGH DEREGULATION OF ADVANCED TELECOMMUNICATIONS SERVICES, SYMMETRICAL TREATMENT OF ALL COMPETITORS, AND ELIMINATION OF OTHER REGULATORY DISINCENTIVES TO INVESTMENT.

The NOI specifically recognizes that government regulation may be a barrier to deployment of advanced telecommunications capability and asks for recommendations as to specific regulatory "techniques" for eliminating any regulatory disincentive to investment.[35] GTE commends the Commission for this recognition. The simple fact is,

---

[34] To the extent the Commission compels service providers to deploy facilities in particular locations, such a public policy initiative should be funded through a broad-based, explicit, competitively neutral mechanism that is visible to the public. This will help assure that such an initiative is truly needed. *See* note 7, *supra*.

[35] NOI, ¶¶ 66-72, 77-82.

the most serious obstacle to the ubiquitous deployment of advanced technology and services is the burdensome and asymmetrical regulation of incumbent LECs. As detailed below in Section III.A, such disparate treatment of ILECs undermines investment incentives. Section III.B contains GTE's specific recommendations for eliminating regulatory barriers to investment in advanced telecommunications capability and services.

A. Asymmetric Regulation of ILEC Advanced Service Offerings Undermines the Goals of Section 706.

In paragraph 77 of the NOI, the Commission seeks comment regarding "the basic legal and regulatory model that will best foster the deployment of advanced telecommunications capability."[36] The answer to this inquiry is clear: all providers of advanced services should be deregulated to the greatest possible extent and, to the extent any residual regulation is necessary, should be subject to symmetrical obligations. The existing approach, under which ILECs alone are subject to burdensome rate regulation and separate affiliate requirements, and are compelled to make the results of their innovation and investment available to competitors at hypothetical forward-looking cost, is wholly inconsistent with the goals of Section 706.

Under today's model, as set forth just last month in the *706 MO&O and NPRM*,[37] ILECs have little incentive to invest in advanced telecommunications capability and little

---

[36] NOI, ¶ 77.

[37] *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 98-188 (released Aug. 7, 1998).

ability to compete in providing advanced telecommunications services. For example, if GTE provides an advanced service through its ILEC, it is subject to dominant carrier regulation, including tariffing and advance notice requirements[38] – even though it has no market power in providing the service. It must unbundle, and provide at cost, access to any packet switches, DSLAMs, and other non-bottleneck equipment used in providing the advanced service[39] – even though such equipment is available in the marketplace to any competitor on the same terms as it is available to GTE's ILECs.[40] And, it must offer the advanced service at a wholesale discount to its competitors, to the extent that the service is provided to subscribers which are not telecommunications carriers[41] – even though any competitor is free to offer the same advanced service using its own facilities or unbundled loops obtained from the ILEC. Under these circumstances, the ILEC has little incentive to invest in advanced telecommunications

---

[38] *See generally* 47 C.F.R. Part 61.

[39] *706 MO&O and NPRM*, ¶ 57. GTE notes that, even if the Commission were correct that xDSL electronics are unbundled network elements, it could not lawfully require ILECs to provide an unbundled loop/electronics platform. *See Iowa Utilities Board v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997), *petition for cert. granted* (invalidating FCC rule requiring ILECs to offer combinations of network elements).

[40] As a result, the unbundling requirement places the capital risk of deploying advanced equipment on the ILEC's shareholders, rather than on the CLEC that is using that equipment to provide advanced services. If demand falls short of the CLEC's expectations, or the CLEC's product offering is inferior, it can simply discontinue purchasing the DSLAM (for example). To assure prudent investment and encourage innovation, the capital risk of investment must be borne by the service provider.

[41] *706 MO&O and NPRM* at ¶¶ 60-61, 188-189.

capability;[42] the Commission essentially has assured that there is no way the ILEC can secure a competitive advantage in the marketplace, even if it is more efficient and innovative than its competitors.

The separate affiliate option offered in the *NPRM* is equally unattractive. Quite simply, in exchange for being permitted to provide advanced services on a non-dominant, non-ILEC basis, GTE would have to sacrifice virtually all integration efficiencies and incur massive costs of duplicating in the hyper-separated affiliate functions that could be obtained from the ILEC on a non-discriminatory basis. Moreover, to the extent that the ILEC is required to unbundle equipment used in the provision of advanced services, and deploy such equipment at the demand of CLECs, the separate affiliate option is simply untenable.

In addition, depending on the precise scope of the final rules, the affiliate might even be prohibited from obtaining services and network elements from the ILEC, even though every other service provider would be free to do so.[43] Burdened with significant regulatory compliance costs and operating under unique disabilities, there is little hope that the affiliate could succeed in the marketplace competing against the likes of the AT&T, MCI/WorldCom, and Sprint combines and the major cable MSOs, none of which

---

[42] Notably, GTE's existing ILEC ADSL offering was introduced prior to adoption of the *MO&O*.

[43] As GTE will explain fully in its comments on the *NPRM*, such proposals violate the Act and the *Iowa Utilities Board* decision by compelling the ILEC to discriminate against the advanced services affiliate and to extend better service to unaffiliated entities than it is permitted to supply to its affiliates.

faces similar obstacles. Under such circumstances, the affiliate's incentive to invest in advanced technology is significantly and artificially depressed.

To promote deployment of advanced telecommunications capability by *all* potential competitors, the Commission must treat all providers of advanced services equally. There is no sound basis for treating high-speed Internet access service one way when offered by an ILEC using a telephony modem (that is, as a bottleneck monopoly service subject to full-fledged Title II regulation) and a different way when offered by a cable company using a cable modem (that is, as a competitive "information" service exempt from Title II regulation). ADSL and cable modems are substitutable, but only ADSL is subject to the disincentives of tariffing, unbundling, and resale, simply because of the historical regulatory status of the ILEC as a common carrier.[44] Likewise, broadband transmission capacity offered by an ILEC in a competitive market should be treated no different than broadband transmission capacity offered by an electric utility, a wireless service provider, or a CLEC fiber network in that same market.[45]

---

[44] Clearly, if ILECs remain subject to unbundling obligations for their ADSL offerings, then there is no basis for failing to extend such obligations to cable modem service offered by a company like AT&T/TCG/TCI. *See Cable Over Internet*, pages 94-96 (discussing proposed requirement that cable companies provide unbundled access to basic transmission capacity).

[45] *See, e.g.*, Public Notice, "Petition of U S WEST Communications, Inc. for Forbearance from Regulation as a Dominant Carrier in the Phoenix, Arizona MSA, CC Docket No. 98-157, DA 98-1712 (Aug. 28, 1998); "U S West Wants FCC to Declare It 'Non-Dominant' in Phoenix," *Communications Daily*, August 25, 1998, at 1 (reporting a statement by a senior U S WEST executive that competing providers have captured greater than 70 percent of the retail market for dedicated high capacity service in Phoenix).

There can be no "bottleneck" for advanced services that either do not yet exist or can be provided by any competitor on equal terms. By statute, ILEC facilities that are even arguably "essential" – primarily local loops – must be unbundled for all competitors on a nondiscriminatory basis.[46] (Of course, under section 251(c)(3), loops must be unbundled only "for the provision of a telecommunications service," not for cable or information services.) Once such facilities are available – as they are in every GTE service territory – any competitor can offer advanced services that utilize those facilities as an input and the ILEC enjoys no undue advantage.

Under these circumstances, regulation that favors or disfavors a particular competitor simply because of its status (e.g., ILEC, CLEC, ISP, MVPD) creates destructive marketplace distortions that deter investment and shift the risks of technology and service deployment to the disfavored class of competitors. These distortions, in turn, give rise to constituencies seeking to perpetuate disparate regulation in order to preserve an artificial competitive advantage. Clearly, the pleas of companies such as AT&T/TCG/TCI/BT, MCI/WorldCom/Brooks/MFS/UUNet, and Sprint/Deutsche Telekom/France Telecom for continued regulatory shackles on the

---

[46] 47 U.S.C. § 251(c)(3). Even local loops are ceasing to be bottleneck facilities for certain customers in many locations. In every medium-sized to large city served by GTE, at least one CLEC (and in some cases several) has constructed fiber facilities connecting to many businesses. Over time, these facilities will reach even more businesses and be extended to less populated areas. CLECs also are building fiber to some residential developments, cable companies are offering voice over coax or hybrid fiber/coax systems, and wireless service providers are already beginning to compete in the local exchange market. Each of these entities bypasses the ILEC loop entirely. Under such circumstances, there is no basis for continuing to subject ILECs alone to unbundling requirements for their loops.

ILECs' offering of advanced services must be rejected as contrary to Section 706 and sound public policy.

B. The Commission Should Immediately Remove Barriers to Investment Resulting from Disparate Regulation of ILECs.

To promote the broadest possible deployment of advanced telecommunications capability, and thereby enhance the availability of the advanced services provided over that technology, the Commission should deregulate ILEC provision of advanced services and take other steps to assure minimal, and symmetrical, regulation of all service providers, regardless of their nominal categorization. Specifically, the Commission should act consistent with the following recommendations.

- Forbear from requiring ILECs to tariff advanced services. CLECs, cable companies, CMRS providers, satellite service providers, and electric utilities do not need to tariff advanced services. ILECs, in contrast, must not only tariff such offerings, but provide advance notice to all of their competitors regarding their rates and promotions. This requirement is profoundly anticompetitive, since it facilitates tacit price collusion among competing providers and permits those companies to delay the introduction of advanced services by the ILEC through meritless regulatory challenges. It also imposes unwarranted costs on ILECs, which are not borne by any of its competitors.

- State that DSLAMs and other non-bottleneck equipment need not be provided to competitors on an unbundled basis. The Commission's blanket statement that all ILEC equipment used to provide advanced services are network elements and may be subject to unbundling is erroneous as a matter of law and directly contrary to

the goal of encouraging ILEC investment in advanced technology. All providers of advanced services should obtain equipment on the free market on equal terms.[47]

- Hold that ILECs need not make advanced services available for discounted resale. As GTE will explain in its comments on the *NPRM*, there is no statutory or policy basis for requiring ILECs to provide advanced services at a discount to their competitors. This requirement plainly discourages investment by both ILECs and other providers in the market.

- Decline to adopt the hyper-separation requirements proposed in the *NPRM* and instead apply the modified *5th Report and Order* safeguards to ILEC advanced service affiliates. As discussed above, the separate affiliate "option" proposed in the NPRM will not enable the ILEC's affiliate to compete against other providers, including the giant, and effectively unregulated, AT&T, MCI/WorldCom, and Sprint combines. GTE's comments on the *NPRM* will demonstrate that the proposed separation requirements are contrary to law, inconsistent with Commission precedent, unduly burdensome, and grossly overbroad. For purposes of this proceeding, however, it is worth re-emphasizing that none of GTE's competitors in the advanced services market – including the very largest telecommunications and cable television companies in the world, most of which have greater resources than GTE – is compelled to provide any service through any kind of separate affiliate.

---

[47] Even if the Commission were correct that such equipment may be classified as network elements, the imposition of unbundling requirements would be contrary to sections 251(d) and 706. GTE will further address this issue in its comments concerning ¶ 180 of the *706 NPRM*.